

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES R. BOWEN,

Plaintiff,

-v-

CAPT. ROBERT PATRICK, *et al.*,

Defendants.

X

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
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DATE FILED: <u>9/20/12</u>

11 Civ. 4799 (JMF) (GWG)

ORDER ADOPTING
REPORT AND
RECOMMENDATION

X

JESSE M. FURMAN, United States District Judge:

This action was referred to Magistrate Judge Gorenstein for a Report and Recommendation. In a Report and Recommendation filed on August 29, 2012, Magistrate Judge Gorenstein recommended that Defendant New York Medical College's motion to dismiss (Docket No. 30) should be granted in its entirety. Magistrate Judge Gorenstein also recommended that the County Defendants' motion to dismiss (Docket No. 35) should be granted except as to the claim against Pamela Williams for failing to intervene.¹

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). A district court "must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). To accept those portions of the report to which no timely objection has been made, however, a district court need only satisfy itself that

¹ The parties collectively referred to as the "County Defendants" are: (1) Westchester County, (2) Capt. Robert Patrick, (3) C.O. Pamela Williams, (4) Sgt. Alvin Rogers, (5) Sgt. Anthony SanMarco, (6) C.O. Adrian Allen, (7) C.O. Joseph Colello, (8) C.O. Kent Green, (9) C.O. Anthony Rosini, (10) Asst. Warden Charles Turner, (11) the John Doe defendants, (12) the Emergency Response Team members, and (13) Dr. Randy Goldberg.

there is no clear error on the face of the record. *See, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). This clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. *See, e.g., Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

In the present case, the Report and Recommendation advised the parties that they had fourteen days from service of the Report and Recommendation to file any objections, and warned that failure to timely file such objections would result in waiver of any right to object. In addition, it expressly called Plaintiff's attention to Rule 72 of the Federal Rules of Civil Procedure and Title 28, United States Code, Section 636(b)(1). Nevertheless, as of the date of this Order, no objections have been filed and no request for an extension of time to object has been made. Accordingly, Plaintiff has waived the right to object to the Report and Recommendation or to obtain appellate review. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *see also Cidor v. Onondaga County*, 517 F.3d 601 (2d Cir. 2008).

Despite the waiver, the Court has reviewed the Report and Recommendation, unguided by objections, and finds it to be well reasoned and grounded in fact and law. Accordingly, the Report and Recommendation is adopted in its entirety, Defendant New York Medical College's motion to dismiss (Docket No. 30) is GRANTED in its entirety, and the County Defendants' motion to dismiss (Docket No. 35) is GRANTED except as to the claim against Pamela Williams for failing to intervene. The Clerk of Court is directed to terminate both motions.

The case remains referred to Magistrate Judge Gorenstein for general pretrial matters and dispositive motions related to the remaining claims.

This Court certifies, pursuant to Title 28, United States Code, Section 1915(a)(3), that any appeal from this Order would not be taken in good faith, and *in forma*

pauperis status is thus denied. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: September 20, 2012
New York, New York



JESSE M. FURMAN
United States District Judge